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6                   **UNITED STATES DISTRICT COURT**  
7                   **DISTRICT OF NEVADA**  
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9                   MAURICE JILES,  
10                  Petitioner,  
11                  vs.  
12                  BRIAN E. WILLIAMS, *et al.*,  
13                  Respondents.  
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15                   Case No. 2:13-cv-00422-GMN-CWH  
16                   **ORDER**

17                  This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254  
18 by a Nevada state prisoner. This matter comes before the Court on the merits of the petition.

19                  **I. Procedural History**

20                  On May 3, 2010, petitioner was convicted, pursuant to a jury trial, of burglary and grand  
21 larceny. (Exhibit 33).<sup>1</sup> Petitioner was adjudicated a habitual criminal and was sentenced to two  
22 concurrent terms of 8-20 years in the Nevada Department of Corrections. (*Id.*) Petitioner appealed  
23 his conviction. (Exhibit 34). The Nevada Supreme Court affirmed petitioner's convictions in an  
order filed December 10, 2010. (Exhibit 47).

24                  On March 3, 2011, petitioner filed a post-conviction habeas petition in the state district  
25 court. (Exhibit 50A). The state district court ordered a response to the petition, and a response was  
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27                  <sup>1</sup> The exhibits referenced in this order are found in the Court's record at ECF Nos. 7, 8, 10, 13  
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1 filed on May 11, 2011. (Exhibits 51 & 52). A hearing was held on May 17, 2011, and the petition  
 2 was summarily denied by minute order. (Exhibit 11, at p. 12).

3 On September 24, 2011, petitioner filed a motion to modify or correct an illegal sentence,  
 4 arguing that the presentence investigation report used at sentencing contained misleading  
 5 information about a 1986 shooting. (Exhibit 53). The state district court denied the motion.  
 6 (Exhibit 56). Petitioner appealed, and on May 9, 2012, the Nevada Supreme Court affirmed the  
 7 denial of the motion. (Exhibit 66). Remittitur issued on June 4, 2012. (Exhibit 68).

8 On March 12, 2013, this Court received petitioner's federal habeas corpus petition. (ECF  
 9 No. 1; ECF No. 4). The federal petition contains two grounds for relief: (1) petitioner claims that  
 10 his due process rights were violated because the presentence investigation report contained  
 11 misleading information about a 1986 shooting; and (2) petitioner claims that the State did not  
 12 present certified copies of his prior judgments of conviction in support of the habitual criminal  
 13 adjudication. (ECF No. 4, at pp. 3-5). Respondents filed a motion to dismiss the petition. (ECF  
 14 No. 6). On January 16, 2014, the Court issued an order finding that Ground 2 of the federal habeas  
 15 petition was unexhausted. (ECF No. 14). Petitioner then moved for a stay of these proceedings,  
 16 pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005), for the purpose of returning to state court to  
 17 exhaust Ground 2. (ECF No. 16). By order filed July 3, 2014, this Court denied petitioner's motion  
 18 for a stay, finding that petitioner failed to show good cause for failing to previously exhaust Ground  
 19 2 and finding that Ground 2 lacked merit. (ECF No. 19). The Court directed respondents to file an  
 20 answer to Ground 1 of the petition. (*Id.*). On July 28, 2014, respondents filed an answer. On  
 21 August 25, 2014, petitioner filed a reply to the answer.

22 **II. Federal Habeas Corpus Standards**

23 The Antiterrorism and Effective Death Penalty Act ("AEDPA"), at 28 U.S.C. § 2254(d),  
 24 provides the legal standard for the Court's consideration of this habeas petition:

25 An application for a writ of habeas corpus on behalf of a person in  
 26 custody pursuant to the judgment of a State court shall not be granted  
 27 with respect to any claim that was adjudicated on the merits in State  
 28 court proceedings unless the adjudication of the claim –

1                     (1) resulted in a decision that was contrary to, or involved an  
 2                     unreasonable application of, clearly established Federal law, as  
 3                     determined by the Supreme Court of the United States; or

4                     (2) resulted in a decision that was based on an unreasonable  
 5                     determination of the facts in light of the evidence presented in the  
 6                     State court proceeding.

7                     The AEDPA “modified a federal habeas court’s role in reviewing state prisoner applications  
 8                     in order to prevent federal habeas ‘retrials’ and to ensure that state-court convictions are given effect  
 9                     to the extent possible under law.” *Bell v. Cone*, 535 U.S. 685, 693-694 (2002). A state court  
 10                    decision is contrary to clearly established Supreme Court precedent, within the meaning of 28  
 11                    U.S.C. § 2254, “if the state court applies a rule that contradicts the governing law set forth in [the  
 12                    Supreme Court’s] cases” or “if the state court confronts a set of facts that are materially  
 13                    indistinguishable from a decision of [the Supreme Court] and nevertheless arrives at a result  
 14                    different from [the Supreme Court’s] precedent.” *Lockyer v. Andrade*, 538 U.S. 63, 73 (2003)  
 15                    (quoting *Williams v. Taylor*, 529 U.S. 362, 405-406 (2000) and citing *Bell v. Cone*, 535 U.S. 685,  
 16                    694 (2002)). The formidable standard set forth in section 2254(d) reflects the view that habeas  
 17                    corpus is “‘a guard against extreme malfunctions in the state criminal justice systems,’ not a  
 18                    substitute for ordinary error correction through appeal.” *Harrington v. Richter*, 562 U.S. 86, 102-03  
 19                    (2011) (quoting *Jackson v. Virginia*, 443 U.S. 307, 332 n.5 (1979)).

20                    A state court decision is an unreasonable application of clearly established Supreme Court  
 21                    precedent, within the meaning of 28 U.S.C. § 2254(d), “if the state court identifies the correct  
 22                    governing legal principle from [the Supreme Court’s] decisions but unreasonably applies that  
 23                    principle to the facts of the prisoner’s case.” *Lockyer v. Andrade*, 538 U.S. at 75 (quoting *Williams*,  
 24                    529 U.S. at 413). The “unreasonable application” clause requires the state court decision to be more  
 25                    than merely incorrect or erroneous; the state court’s application of clearly established federal law  
 26                    must be objectively unreasonable. *Id.* (quoting *Williams*, 529 U.S. at 409). In determining whether  
 27                    a state court decision is contrary to, or an unreasonable application of federal law, this Court looks  
 28                    to the state courts’ last reasoned decision. *See Ylst v. Nunnemaker*, 501 U.S. 797, 803-04 (1991);  
*Shackelford v. Hubbard*, 234 F.3d 1072, 1079 n.2 (9<sup>th</sup> Cir. 2000), cert. denied, 534 U.S. 944 (2001).

1       In a federal habeas proceeding, “a determination of a factual issue made by a State court  
 2 shall be presumed to be correct,” and the petitioner “shall have the burden of rebutting the  
 3 presumption of correctness by clear and convincing evidence.” 28 U.S.C. § 2254(e)(1). If a claim  
 4 has been adjudicated on the merits by a state court, a federal habeas petitioner must overcome the  
 5 burden set in § 2254(d) and (e) on the record that was before the state court. *Cullen v. Pinholster*,  
 6 563 U.S. 170, 185 (2011).

7 **III. Discussion**

8       In Ground 1 of the federal petition, petitioner claims that his due process rights were violated  
 9 because the presentence investigation report used by the state court at sentencing contained  
 10 misleading information about a 1986 shooting. (ECF No. 4, at p. 3). Petitioner raised this claim in  
 11 his motion to modify and/or correct an illegal sentence. (Exhibit 53). The state district court denied  
 12 the motion. (Exhibit 56). Petitioner appealed. (Exhibit 57). On May 9, 2012, the Nevada Supreme  
 13 Court filed an order affirming the denial of the motion. (Exhibit 66). The Nevada Supreme Court  
 14 rejected petitioner’s claim as follows:

15           In his motion, filed on September 24, 2011, appellant claimed that the  
 16 presentence investigation report (PSI) contained inaccurate  
 17 information regarding a 1986 shooting that appellant committed and  
 18 that the district court did not make certain findings prior to sentencing  
 him. We first note that the findings to which appellant refers are  
 required only of federal sentencing courts. Fed. R. Crim. P. 1(a)(1),  
 32(i)(3)(B).

19           Further, appellant failed to demonstrate that the district court relied on  
 20 mistaken assumptions regarding his criminal record that worked to his  
 21 extreme detriment. See *Edwards v. State*, 112 Nev. 704, 708, 918  
 22 F.2d 321, 324 (1996). Notably, the PSI did not reference the 1986  
 23 shooting conviction, and appellant explained the unique factual  
 24 circumstances when the State raised the conviction at sentencing.  
 Moreover, although the State sought consecutive sentences of life  
 with the possibility of parole after 10 years, appellant received  
 concurrent sentences of 8 to 20 years. Appellant also failed to  
 demonstrate that his sentence was facially illegal or that the district  
 court lacked jurisdiction. See *id.* We therefore conclude that the  
 district court did not err in denying appellant’s motion.

25 (Exhibit 66, at pp. 1-2).

26       In support of his claim, petitioner cites to Ninth Circuit cases governing the application of  
 27 Rule 32 of the Federal Rules of Criminal Procedure including *U.S. v. Carter*, 219 F.3d 863 (9<sup>th</sup> Cir.  
 28

1 2000), *U.S. v. Houston*, 217 F.3d 1204 (9<sup>th</sup> Cir. 2000), *U.S. v. Standard*, 207 F.3d 1136 (9<sup>th</sup> Cir.  
2 2000), *U.S. v. Fernandez-Angulo*, 897 F.2d 1514 (9<sup>th</sup> Cir. 1990), and *U.S. v. Ibarra*, 737 F.2d 825  
3 (1984). (ECF No. 4, at p. 3). The Nevada Supreme Court was correct in its determination that these  
4 cases are irrelevant to petitioner's motion to modify and/or correct an illegal sentence in the Nevada  
5 state courts.

6 It is well-established that sentencing hearings are subject to the requirements of the Due  
7 Process Clause. *Gardner v. Florida*, 430 US. 349, 358 (1977). Criminal defendants have a due  
8 process right not to be sentenced on the basis of materially untrue assumptions about their criminal  
9 record. *Townsend v. Burke*, 334 U.S. 736, 740 (1948). The criminal defendant has the burden of  
10 showing that the sentencing judge relied on materially false information in determining the  
11 sentence. *See United States v. Rachels*, 820 F.2d 325, 328 (9<sup>th</sup> Cir. 1987).

12 The Nevada Supreme Court concluded that petitioner failed to demonstrate that the  
13 sentencing court relied on materially false information. (Exhibit 66, at p. 1). This was a reasonable  
14 conclusion. At sentencing in the state district court, as part of the recitation of petitioner's criminal  
15 history, the State provided proof of two prior convictions in Wisconsin for endangering safety with  
16 conduct regardless of life, based on gun shots fired by petitioner at another person. (Exhibit 30, at  
17 pp. 3-4). The sentencing transcript shows that petitioner had the opportunity to explain the facts of  
18 these shootings, and he did so. (*Id.*, at pp. 7-9). Petitioner acknowledged the convictions and  
19 explained the mitigating facts of the incident and the reasons why he received relatively lenient  
20 punishment. (*Id.*). Petitioner's attorney addressed the incident as well. (*Id.*, at p. 14). When the  
21 state district court addressed petitioner and pronounced its sentence, there was no reference to those  
22 particular convictions. (*Id.*, at p. 15-17). The court specifically stated that petitioner's criminal  
23 history was not the most egregious. (*Id.*, at p. 17). However, the sentencing judge decided to  
24 adjudicate petitioner a habitual criminal based on the length of his criminal history, stating that the  
25 statute "has no meaning if people like yourself that commit crimes over and over and over again on  
26 a consistent basis don't get habitualized . . ." (*Id.*, at p. 17). The court sentenced petitioner to two  
27 concurrent terms of 8-20 years, rather than two consecutive terms of ten-to-life, as requested by the  
28 prosecution. (*Id.*, at pp. 7, 18).

1       Because the record does not support petitioner's contention that his sentence was based upon  
2 materially untrue assumptions about his criminal record, the Nevada Supreme Court properly denied  
3 his claim. The state court's factual findings are presumed correct. 28 U.S.C. § 2254(e)(1); *see*  
4 *Taylor v. Maddox*, 366 F.3d 992, 999 (9<sup>th</sup> Cir. 2004). Petitioner has failed to meet his burden of  
5 proving that the Nevada Supreme Court's ruling was contrary to, or involved an unreasonable  
6 application of, clearly established federal law, as determined by the United States Supreme Court, or  
7 that the ruling was based on an unreasonable determination of the facts in light of the evidence  
8 presented in the state court proceeding. The Court denies habeas relief as to Ground 1 of the federal  
9 petition.

10 **IV. Certificate of Appealability**

11       District courts are required to rule on the certificate of appealability in the order disposing of  
12 a proceeding adversely to the petitioner or movant, rather than waiting for a notice of appeal and  
13 request for certificate of appealability to be filed. Rule 11(a). In order to proceed with his appeal,  
14 petitioner must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9<sup>th</sup>  
15 Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951 (9<sup>th</sup> Cir. 2006); *see also United States v.*  
16 *Mikels*, 236 F.3d 550, 551-52 (9th Cir. 2001). Generally, a petitioner must make "a substantial  
17 showing of the denial of a constitutional right" to warrant a certificate of appealability. *Id.*; 28  
18 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). "The petitioner must  
19 demonstrate that reasonable jurists would find the district court's assessment of the constitutional  
20 claims debatable or wrong." *Id.* (*quoting Slack*, 529 U.S. at 484). In order to meet this threshold  
21 inquiry, the petitioner has the burden of demonstrating that the issues are debatable among jurists of  
22 reason; that a court could resolve the issues differently; or that the questions are adequate to deserve  
23 encouragement to proceed further. *Id.* In this case, no reasonable jurist would find this court's  
24 denial of the petition debatable or wrong. The Court therefore denies petitioner a certificate of  
25 appealability.

26 **V. Conclusion**

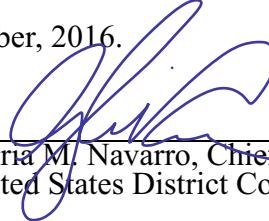
27       **IT IS THEREFORE ORDERED** that the petition for a writ of habeas corpus is **DENIED**.

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1           **IT IS FURTHER ORDERED** that petitioner is **DENIED A CERTIFICATE OF**  
2 **APPEALABILITY.**

3           **IT IS FURTHER ORDERED** that the Clerk of Court **SHALL ENTER JUDGMENT**  
4 **ACCORDINGLY.**

5           Dated this       8       day of September, 2016.

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7             
8           Gloria M. Navarro, Chief Judge  
9           United States District Court

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